

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3100 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MALHOTRA STEEL INDUSTRIES GUJ.PVT LTD

Versus

STATE OF GUJARAT

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Appearance:

Shri A.S. Vakil, Advocate, for Shri S.B. Vakil,  
Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/04/96

ORAL JUDGEMENT

The order passed by the Industries Commissioner, Ahmedabad and also ex-officio Secretary, Revenue Department (respondent No. 2 herein) on behalf of the State Government (respondent No. 1 herein) on 6th March 1986 under sec. 20(1) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 granted exemption under sec. 20(1) of the Act to the extent of 6810 square meters out of the total area of 11797.79 square meters in receipt of which full exemption was claimed by the petitioner for industrial purposes.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to mention that the petitioner appears to have applied for exemption under sec. 20(1) of the Act on 28th September 1976. It appears to have been done in a prescribed form and it was sent with one forwarding letter of 28th September 1976. A copy of the forwarding letter is at Annexure B to this petition. It appears that certain information was called for from the petitioner. The petitioner supplied it by his communication of 24th June 1982. A copy of the details furnished in the prescribed form in that regard is at Annexure D to this petition. Thereafter, by his order passed on 6th March 1986 on behalf of respondent No. 1, respondent No. 2 granted exemption to the extent of 6810 square meters as against 11797.79 square meters claimed by the petitioner. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the limited exemption granted by the impugned order at Annexure A to this petition.

3. The grievance voiced against the impugned order at Annexure A to the petition to the extent full exemption is not granted are many. This petition however can be disposed of on two main grievances.

4. As rightly submitted by learned Advocate Shri Vakil for the petitioner, the impugned order at Annexure A to this petition suffers from the vice of non-application of mind on the part of its author inasmuch as the Government circular of 11th October 1985 (a copy of which is at Annexure F to this petition) has not been properly considered. Besides, as rightly pointed out by Shri Vakil for the petitioner, though the application for exemption appears to have been made on 28th September 1976, what is taken to be the application of the petitioner was the additional information supplied by it in the printed form at Annexure D to this petition. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has urged that the petitioner's original application made on 28th September

1976 was considered and the date of 24th June 1982 appears to have been wrongly mentioned in the impugned order at Annexure A to this petition. Learned Assistant Government Pleader Shri Sompura has further urged that the author of the impugned order at Annexure A to this petition has taken into consideration the Government Circular at Annexure F to this petition.

5. It transpires from the impugned order at Annexure A to this petition that respondent No. 2 has found the land housing the petitioner's industry to have been situated in the residential zone both in the development plan and in the master plan. Learned Advocate Shri Vakil for the petitioner has urged that, according to the certificate issued by the Nagar Panchayat of Odhav, the land was situated in the industrial zone in the development plan. It has been urged that the aforesaid certificate issued by the nagar panchayat of Odhav accompanied additional information furnished by the petitioner on 24th June 1982 as per Annexure D to this petition. It clearly transpires from the impugned order at Annexure A to this petition that this aspect of the matter has not been considered by its author and he has just reached the conclusion that the land in question has been shown in the residential zone in both the development plan and the master plan.

6. It would be quite proper at this stage to look at the circular at Annexure F to this petition. It provides guidelines for taking the decision on grant of exemption under sec. 20(1) of the Act. It has taken into consideration discrepancies of the situation of a land housing an industry in the master plan and the development plan. If there is such discrepancy, para 1 of the Circular at Annexure F would apply and if there is no discrepancy, para 2 thereof would apply. It thus becomes clear that the applicability of para 1 or para 2 of the circular at Annexure F to this petition would depend on ascertainment of the correct situation of the land in question in the development plan and in the master plan. If the zoning certificate issued by the nagar panchayat at Odhav accompanying the additional information furnished along with Annexure D to this petition is not considered, the applicability of para 1 or para 2 of the circular at Annexure F to this petition would be fallacious. I am therefore of the opinion that the impugned order at Annexure A to this petition suffers from the vice of non-application of mind on the part of its author qua not considering the zoning certificate issued by the nagar panchayat at Odhav.

7. Even assuming for the sake of argument that the situation of the land in question in the development plan and in the master plan has rightly been assessed by respondent No. 2 in his impugned order at Annexure A to this petition, para 2 of the circular at Annexure F to this petition would govern the situation. It requires the authority deciding the question of grant of exemption to consult the local authority before finally deciding the question. The impugned order at Annexure A to this petition clearly shows that no such consultation was made with the local authority before passing it. Learned Assistant Government Pleader Shri Sompura for the respondents informs me that some officer from respondent No. 1's office is present with the record of the case and on its perusal it is clearly found that no such consultation with the local authority is found to have been made before passing the impugned order at Annexure A to this petition. In that view of the matter also, the impugned order at Annexure A to this petition can be said to be suffering from the vice of non-application of mind on the part of its author.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition cannot be sustained in law and it has to be quashed and set aside. The matter deserves to be remanded to respondent No. 1 for restoration of the proceedings to file and for its fresh decision according to law in the light of this judgment of mine. It would be desirable on the part of respondent No. 1 to give an opportunity of making representation to the petitioner or to grant personal hearing to it before finally deciding the matter.

9. In the result, this petition is accepted. The order passed by respondent No. 2 on behalf of respondent No. 1 on 6th March 1986 at Annexure A to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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